

THE CHAIRMAN: Delegate Morgan, I think there were similar problems in the Executive Branch Committee in the final recommendations. Were there any provisions which would be affected one way or another by this section?

DELEGATE MORGAN: Possibly two provisions, Mr. Chairman. There is one that gives the General Assembly two years in which to make the initial organization of the executive branch of the government. Then if the General Assembly fails to do it within two years, the governor is given authority to accomplish that organization by an executive order, and that executive order does not have to have the approval of the General Assembly. And under the general reorganization powers of the governor, while the governor is given power to initiate the plans by executive order, and submit them to the General Assembly during the first ten days of their session, they lie before the General Assembly for fifty days and if they are not disapproved by one or the other house of the General Assembly by the end of fifty days, they become law and have the force and effect of law.

THE CHAIRMAN: Delegate Mudd, would the provision in question, section 3, have any bearing upon the provisions in the judicial branch article giving the legislature and the Court of Appeals concurrent power in certain areas to adopt rules of procedure?

DELEGATE MUDD: It did not occur to us in the Committee, Mr. Chairman, as I recollect, since the rule-making power was thought of in connection with the matters of practice and procedure, and the legislature would be prescribing by law matters of substance.

THE CHAIRMAN: Very well. Is there any further discussion?

Delegate Kiefer.

DELEGATE KIEFER: Mr. Chairman, I do not believe that I personally would have objection to adding language to this particular section to make it clear and still establish the basic principles that we have in mind, something like this: unless otherwise provided in this constitution.

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: I would like to amplify a little bit on what Chairman Mudd has said. It seems to me that there are several areas in which this might have an effect.

For example, in the redistributing cases which the Court of Appeals is given authority to try and in passing on the disability of the governor and, in fact, even in the rule-making power which has the force and effect of law, it is certainly legislative and it seems to me that there are a number of areas where this thing crosses over between the three branches. If they are to be literally separated, it might indeed invalidate a lot of things we are doing here.

THE CHAIRMAN: Delegate Bamberger.

DELEGATE BAMBERGER: Will Delegate Henderson yield to a question?

DELEGATE HENDERSON: Yes.

THE CHAIRMAN: Delegate Bamberger.

DELEGATE BAMBERGER: Judge Henderson, when we are talking about provisions in the constitution, are we not then talking about provisions of equal dignity and so without even the words that Delegate Kiefer suggests, a provision in the constitution which says that the powers shall be separate would not be or could not strike down a provision of that same document which provided for some intermixing of those powers.

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: Well, it may be that you could construe everything to go, but the simplest solution to the problem I suggest is to leave out this provision calling for the absolute separation of powers which has never been true in any department.

I could give a dozen different illustrations of it. The rule-making power is given to all, practically all the executive agencies, for example, and yet it has the force of law within the field. That is just one illustration, and I think it just confuses the issue to put this old provision in, to repeat it in the present constitution.

THE CHAIRMAN: Does any other delegate desire to speak in opposition to the amendment?

Delegate Adkins.

DELEGATE ADKINS: I would like to ask a question, Mr. Chairman, of the Committee Chairman.

THE CHAIRMAN: Delegate Weidemeyer, do you desire to ask a question or to speak?

DELEGATE WEIDEMEYER: I would like to ask Delegate Henderson a question.

THE CHAIRMAN: Delegate Henderson, will you yield to another question?